

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 4:15-MJ-00712-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Houston, Texas
)	
ASHER ABID KHAN,)	Wednesday, May 27, 2015
)	(10:20 a.m. to 10:23 a.m.)
Defendant.)	(2:26 p.m. to 2:32 p.m.)

INITIAL APPEARANCE

BEFORE THE HONORABLE FRANCES H. STACY,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	CAROLYN FERKO, ESQ. U.S. Attorney's Office 1000 Louisiana, Suite 2300 Houston, TX 77002
For Defendant:	THOMAS S. BERG, ESQ. 4306 Yoakum Blvd., Suite 400 Houston, TX 77006
Court Recorder:	Olivier Lindor
Transcribed By:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, Texas 78480-8668 361 949-2988

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Houston, Texas; Wednesday, May 27, 2015; 10:20 a.m.

(Call to Order)

THE COURT: First case is H-15-00712-M, *United States versus Asher Abid Khan*.

MS. FERKO: Good morning, your Honor. Carolyn Ferko for the United States.

THE COURT: Hi, Mr. Khan. I see that you filled out a financial affidavit requesting a lawyer to be appointed for you.

THE DEFENDANT: Yes.

THE COURT: Will you please raise your right hand and swear to the facts in this financial affidavit?

THE CLERK: Do you acknowledge that the information in the financial affidavit is true and correct to the best of your knowledge and belief so help you God?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. I do find that you're financially eligible --

MS. FERKO: Your Honor, the only thing I would state for the record is that there will be -- we need cleared counsel for this.

THE COURT: What does that mean?

MS. FERKO: There'll be some classified information possibly.

THE COURT: Does the Public Defender qualify?

1 **MS. FERKO:** I'm not sure about that, your Honor. I
2 think that the office has to speak to that. I'm not -- I'm not
3 positive. I think they have the ability to be cleared.

4 **THE COURT:** Do you have cleared counsel?

5 **MR. BRAY:** To my knowledge we need to
6 (indiscernible) --

7 **THE COURT:** A security clearance.

8 **MR. BRAY:** -- and we don't have anybody who has a
9 security clearance because none of us that are there now have
10 been in the military or worked for the CIA or anything like
11 that.

12 **THE COURT:** Do you -- do you know any lawyers?

13 **MS. FERKO:** I know that -- I know Mr. David Adler, I
14 know he is -- he's been cleared before.

15 **MR. BRAY:** And I think maybe Tom Berg perhaps.

16 **THE COURT:** I'm going to appoint Mr. Berg for now
17 because I -- I hear that Mr. Khan's family is still trying to
18 hire an attorney for him. Is that true?

19 **THE DEFENDANT:** I think so.

20 **THE COURT:** Okay. So, Mr. Berg will -- is usually
21 really helpful at appearing on short notice, which I'm very
22 grateful for, and he's previously been a Public Defender and
23 I'm -- it's being represented that he has security clearance.
24 I think he's still in the military.

25 **MR. BRAY:** Your Honor, I don't know that. I think --

1 **THE COURT:** Yeah. He's in -- he's in military.

2 **MR. BRAY:** Right. That's why I think that.

3 **THE COURT:** Thank you. So, I think he'd be a good
4 attorney to help you and I'm also going to reset this hearing
5 for 2:00 o'clock --

6 **MR. BRAY:** That's fine, your Honor.

7 **THE COURT:** -- because the Pretrial Service Agency is
8 trying to make a pretrial report for you about bail matters
9 that I need to consider. So, maybe between now and then
10 Mr. Berg will be able to meet with you here in the courthouse.

11 **THE DEFENDANT:** Okay.

12 **THE COURT:** Anyway, we can give you a copy of the
13 complaint. It's not sealed, correct?

14 **MS. FERKO:** No, your Honor, it was unsealed upon
15 arrest, and I believe he has a copy right in front of him.

16 **THE COURT:** Do not discuss this case with anyone
17 except your own lawyer, and we'll recall your case at
18 2:00 o'clock. You may have a copy of the complaint to read in
19 the meantime.

20 **MR. BRAY:** Thank you, your Honor.

21 **MS. FERKO:** That concludes my business at this time
22 if I may be excused.

23 **THE COURT:** Yes, until 2:00.

24 **MS. FERKO:** Yes, thank you, your Honor.

25 **THE COURT:** All right.

1 **(Recess taken from 10:23 a.m. to 2:26 p.m.)**

2 **THE COURT:** The next case is *U.S. versus Asher Abid*
3 *Khan*, 2015-00712-M. Hi, Mr. Berg.

4 **MS. FERKO:** Good afternoon, your Honor. Carolyn
5 Ferko for the United States.

6 **MR. BERG:** And Tom Berg for Mr. Khan.

7 **THE COURT:** Do you have the security clearance that
8 Ms. Ferko is wanting for a lawyer to represent --

9 **MS. FERKO:** We were talking, your Honor. As I said,
10 it's just the ability to be cleared. As I said, I'm not
11 positive if there's actually going to be a need for it. As I
12 said, it's determined, you know, in the future so at this time
13 I believe Mr. Berg would have the ability to be cleared.

14 **MR. BERG:** I have had a Top Secret clearance and I --
15 I think it's still active --

16 **THE COURT:** Okay. Good.

17 **MR. BERG:** -- even though I'm retired from the Army.

18 **MS. FERKO:** I think it's a non-issue, so...

19 **THE COURT:** I hope it's --

20 **MR. BERG:** But it certainly can be reinstated without
21 any difficulty by the Government because I've already had one
22 with a background check.

23 **THE COURT:** Very good. All right. Well, I didn't
24 discuss very much about the case with Mr. Khan this morning;
25 only enough to assign a lawyer for him and I gave him a copy of

1 the complaint, but I didn't read it.

2 **MR. BERG:** Thank you.

3 **THE COURT:** And I'd like to tell Mr. Khan that you
4 have the right to remain silent and not make any statement
5 about the facts of this case to anyone other than your lawyer.
6 And that means you're not required to discuss the case with law
7 enforcement officials. You're not required to answer any of
8 their questions.

9 It also means you are not required to explain
10 anything about the facts of this case to any judge or to any
11 jury. You're not required to be a witness. You're not
12 required to gather witnesses or make, you know, present
13 evidence to explain anything about the facts of this case or
14 defend yourself.

15 You should only talk privately to your lawyer. And
16 everything you discuss with your lawyer is required to be kept
17 confidential between you and your lawyer so that you can speak
18 with your lawyer with confidence. All right? And rely on your
19 attorney to represent you at every court appearance and to
20 counsel with you outside of court, to help you prepare for
21 hearings, make decisions about your case, and come to some
22 resolution about your case. So, you understand your right to
23 an attorney?

24 **(No audible response)**

25 **THE COURT:** You also have the right to an attorney on

1 appeal even if you cannot afford one. Do you understand all
2 those rights?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Yes. Okay.

5 The complaint that was filed, it was filed on May
6 25th, and it was sworn to by Keith Farve (phonetic) who's a
7 Special Agent of the FBI. And it alleges that you made
8 agreement or a conspiracy to provide material support to a
9 foreign terrorist organization known as ISIL, I-S-I-L; that you
10 allegedly engaged in this activity between December 2013
11 through December of 2014 in Harris County, Texas.

12 And how did he allegedly do this?

13 **MS. FERKO:** Your Honor, Mr. Khan, beginning on or
14 about December of '13 through December '14, he assisted -- he
15 befriended a friend he knew from Houston with the initials SRG;
16 that was approximately on January 6th. He began -- they agreed
17 to go -- they wanted to go fight with ISIL. I believe Mr. Khan
18 stated he wanted to be a Shiite (phonetic), he wanted to be a
19 martyr.

20 He also had contact with -- Mr. Khan had a -- with a
21 24-year-old foreign national that we currently believe is
22 residing in Turkey, and that individual also assisted them in
23 facilitating Mr. Khan's ability to introduce him to Mr. SRG,
24 and that individual ultimately, your Honor, ended up with ISIS/
25 ISIL in August of 2014.

1 **THE COURT:** SRG are his initials?

2 **MS. FERKO:** Yes, are his initials, yes, your Honor.

3 **THE COURT:** Okay. And this -- this affidavit
4 contains quite a bit of information including facts that the
5 Government intends to prove to show that you engaged in this
6 illegal activity. And I have given you a copy; I gave a copy
7 to your lawyer as well.

8 Do you understand the accusations against you?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** Could you also summarize the range of
11 punishment? The statutory range of punishment.

12 **MS. FERKO:** Yes, your Honor. It's up to 15 years,
13 your Honor, or \$200,000 fine. And a five-year supervised
14 release term.

15 **THE COURT:** Are you moving to detain Mr. Khan?

16 **MS. FERKO:** Yes, we are, your Honor.

17 **THE COURT:** Okay.

18 **MS. FERKO:** And we would ask for additional time to
19 have a hearing.

20 **THE COURT:** Can we have a hearing this week?

21 **MR. BERG:** I can't do it this week because I have to
22 be in Beaumont tomorrow and I have a death penalty client at
23 the Polunsky Unit on Friday that I had already scheduled. I
24 realize I -- I'm a rare commodity under these circumstances.

25 **THE COURT:** You realize what?

1 **MR. BERG:** So, I could -- I'm a rare commodity
2 because I've got the ability to be cleared. I understand that.

3 **THE COURT:** Okay. You're very special. Well --

4 **MR. BERG:** But -- so, I think Monday is probably when
5 we need to do this.

6 **THE COURT:** Okay.

7 **MS. FERKO:** We can be ready Monday morning, your
8 Honor.

9 **THE COURT:** For next -- the following week, we are
10 not going to set any hearings for 2:00 p.m. Any day?

11 **THE CLERK:** Just for Monday.

12 **THE COURT:** Monday. So, but what about 10:00 o'clock
13 on Monday?

14 **MS. FERKO:** I can do the morning -- we can do the
15 morning, your Honor. That's fine.

16 **THE COURT:** If you'd rather have Tuesday, it's okay,
17 but it would have to be something the Defendant requests
18 because it's a long time to wait without a hearing and be in
19 custody.

20 **(Pause)**

21 **MR. BERG:** Monday morning at 10:00 is fine.

22 **THE COURT:** All right. Then you'll be temporarily
23 detained, Mr. Khan. You're going to be in custody where?

24 **THE MARSHAL:** Joe Corlie (phonetic), I believe, your
25 Honor.

1 **THE COURT:** Okay. You're going to be in custody at
2 Joe Corlie, and between now and the hearing on Monday, your
3 lawyer will come meet with you. Is that right, Mr. Berg?

4 **MR. BERG:** That is correct.

5 **THE COURT:** To prepare for the hearing, but other
6 than that, you shouldn't discuss this case with anybody else
7 because people who are not your lawyer can be required to be a
8 witness whether they want to be one or not. Okay?

9 **(No audible response)**

10 **THE COURT:** And so that's going to be temporary
11 detention until 10:00 o'clock on Monday, the date will be --

12 **MR. BERG:** June 1st.

13 **MS. FERKO:** June 1st, I believe, your Honor.

14 **THE COURT:** Okay, June 1st. And we have a Pretrial
15 Services report prepared and I would like to look at that.
16 Okay? Any other matters we need to discuss at this hearing?

17 **MS. FERKO:** Not at this time, your Honor.

18 **MR. BERG:** None. No, your Honor.

19 **THE COURT:** The hearing is adjourned.

20 **MS. FERKO:** Thank you, your Honor. That concludes my
21 business, if I can be excused.

22 **THE COURT:** Yes.

23 **MS. FERKO:** Thank you. Have a great day.

24 **THE COURT:** You, too.

25 **(This proceeding was adjourned at 2:32 p.m.)**

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Signed

September 18, 2018

Dated

TONI HUDSON, TRANSCRIBER